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February 21, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 92-260 (Cable Home Wiring)

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's Rules, Time Warner New York City Cable Group ("Time Warner") hereby submits this response to the ex parte letter submitted by Liberty Cable Company, Inc. ("Liberty") in this proceeding on January 13, 1995 ("Liberty's January 13 Letter").

Liberty's January 13 Letter is replete with misleading inferences and outright falsehoods. Time Warner feels compelled to respond in order to set the record straight. In providing this detailed response, however, Time Warner urges the Commission not to become so enmeshed in the specifics of the parochial disputes between Time Warner and Liberty in Manhattan that it loses sight of the overriding telecommunications policy issues which are at stake.

The bottom line is that the current FCC definition of the point of demarcation for cable home wiring promotes facilities-based competition, because each competitor is required to construct and maintain an independent internal broadband distribution infrastructure in the multiple dwelling unit ("MDU") building. This policy promotes consumer choice, because

MDU residents have absolute freedom to select among multiple services provided by competing providers simultaneously. Drastic alteration of the point of demarcation would violate the express provisions of the home wiring provision of the 1992 Cable Act and would preclude competition, because only one broadband provider could offer services to an MDU resident at any given time. In particular, the change in the demarcation point definition advocated by Liberty and telephone interests would make it impossible for Time Warner to compete with an existing telephone company serving that MDU, because Time Warner needs to retain its internal broadband distribution infrastructure in the MDU building so that voice, video and data transmissions can be delivered to each MDU resident.

It should be abundantly clear to anyone who attended the January 18, 1995 home wiring meeting that the real complaint expressed by Liberty and other multichannel video programming distributors ("MVPDs") seeking to serve MDUs is not that franchised cable operators have engaged in any improper tactics, but that such MVPDs are purportedly unable to negotiate contractual arrangements with landlords allowing them to install their wiring in MDU buildings. This is an ironic position indeed coming from Liberty, given that the Milstein family, which controls Liberty as well as one of the largest landlord/property management firms in New York City, has engaged in a relentless campaign to thwart Time Warner's ability to install cable facilities in MDU buildings, as it is required to do under its franchise and authorized to do under New York law.

The Commission must not lose sight of the simple fact that, as mandated by the express language of the 1992 Cable Act, this proceeding is strictly limited to ownership and control of broadband facilities installed within individual units of MDU buildings. This proceeding is not about adoption of rules that might enhance the bargaining position of Liberty, Time Warner, or any other MVPD vis a vis landlords. Indeed, issues relating to ownership and control of broadband facilities installed in common areas of MDU buildings, but outside the four walls of individual units, are properly the province of contractual negotiations between the MVPD and the landlord pursuant to state law.

I. Liberty and other unfranchised MVPDs often pay handsome compensation to landlords for the right to install wiring.

Liberty takes Time Warner to task for stating in its December 5, 1994 ex parte letter that "landlords typically receive handsome compensation from unfranchised MVPDs based on a percentage of their revenues from the building" and thus have a "strong incentive" to allow

hallway molding or exterior installations.[1] Liberty flatly asserts that "Liberty does not pay such compensation."[2]

Liberty **does**, however, pay such compensation. Attached hereto as Exhibit A is Liberty's Agreement, dated June 19, 1992 ("Agreement"), with River Tower Associates, which owns and operates a luxury apartment building located at 420 East 54th Street in Manhattan. Under paragraph 9 of this Agreement, Liberty pays the landlord a fee of $1 per month per subscriber.[3] It is therefore apparent that Liberty **does** pay landlords substantial fees, including fees based upon Liberty's revenue.

In reviewing the cable license agreement between Liberty and River Tower Associates, it should be noted that Liberty had the right under paragraph 4 thereof to install its own cable in the conduit or use the cable already installed in the conduit, provided that, prior to using the conduit or any cable therein, Liberty obtain "consent in writing to such use or obtain the appropriate court order allowing such use" from Manhattan Cable, predecessor in interest to Time Warner Cable of New York City.

Liberty chose not to install its own cable in the conduit at River Tower, even though the landlord clearly did not object to this. Liberty simply commenced using Time Warner's cable without requesting Time Warner's consent, without giving Time Warner any notice thereof, and without obtaining any court order allowing Liberty to do so. Liberty did this knowing that Time Warner had a contract with River Tower Associates, dated December 30, 1981, which prohibits the owner or anyone acting under the owner's authority from tampering with Time Warner's cable facilities, for which Time Warner expended tens of thousands of dollars. Since 1992, Liberty has been offering service at River Tower using Time Warner's home run cables without paying Time Warner anything for the privilege, enabling Liberty to undercut Time Warner's prices by virtue of its ability to avoid incurring

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[1] See Liberty's January 13 Letter at 6-7 (citing Time Warner's December 5, 1994 Letter at 8).

[2] Id. at 7.

[3] As evidenced by the other agreements between Liberty and River Tower Associates' affiliates, Liberty makes additional monthly payments of $2,625 and $250 for rights to install and maintain transmitters and/or cable crossing over to an adjacent apartment building (this is one of Liberty's illegal, unfranchised cable systems). Time Warner obtained these documents from the public files in Liberty Cable Company, Inc. v. Roofcom Associates, Index No. 93/133880 (N.Y. Sup. Ct. N.Y. Co.), an action commenced by Liberty against the landlord and its affiliates in which Time Warner is not a party and is in no way involved.

similar construction costs.[4] Liberty's proposed changes to the Commission's home wiring rules would authorize such practices.

Most of the Liberty contracts that we have seen (an example is attached hereto as Exhibit C) allow Liberty to decide how the system will be built, including the extent to which Liberty will install new cable or use existing cable, "subject to the Owner's approval which shall not be unreasonably withheld or delayed."[5] In MDU buildings without internal conduits (the vast majority), or where internal conduits cannot accommodate an additional cable, Liberty has readily obtained permission from building owners (including cooperatives) to install its cable on the exterior of the building (e.g., 555 Park Avenue), or in hallway moldings (e.g., 60 Sutton Place South).[6] Liberty's self-proclaimed success and growth rate demonstrates that Liberty faces no insurmountable obstacles preventing it from installing new cable; Liberty simply prefers to take over the existing cable because such parasitic behavior allows Liberty to unfairly underprice the franchised cable operator who has had to incur this expense.

Such blatantly parasitic behavior is directly contrary to Congress' goal of promoting competition in the multichannel video distribution industry,[7] and therefore, should not be tolerated. Congress simply did not intend for the rules promulgated pursuant to the home wiring provision to allow competing MVPDs to take over cable facilities installed and used by the franchised cable operator, and effectively eliminate franchised cable service thereby.

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[4]Liberty has repeatedly opted to usurp Time Warner's cable facilities instead of installing its own system even when, by its own admission, installation of a parallel, coexisting system is "non-intrusive and requires minimum construction." Liberty promotional brochure, dated December 30, 1994, the relevant pages of which are attached hereto as Exhibit B; see also Time Warner's January 27, 1995 Letter at 3-4.

[5]Agreement at ¶ 3; see also id. at ¶ 4.

[6]Whether new wiring must be installed in conduit along the exterior of an MDU building, or whether it can be installed in hallways or stairwells, Liberty admits that it "takes just days to install, is invisible to residents and does not interfere with any existing electrical or cable service." Exhibit B hereto. Even while admitting, and widely advertising, the ease of installing new wiring in an MDU, Liberty still chooses to take over existing facilities whenever possible.

[7]See 1992 Cable Act at § 2(b) (Statement of Policy).

In accordance with Congress' intent, the Commission should establish rules that foster competition among various MVPDs, not provide unfair advantages to particular competitors, such as Liberty.

II. Liberty has attempted to mislead the Commission by grossly understating the value of wiring installed by franchised cable operators in MDU buildings.

Liberty has attached to its January 13 Letter documentation showing that the predecessor company of Time Warner's affiliate, Paragon Cable Manhattan, paid for the installation of the cable facilities at 182 East 95th Street, which Liberty is now using without having requested or obtained Paragon's consent. Liberty claims that the terms of payment reflected in this documentation are "typical," and extrapolates that it costs Time Warner only $30 per apartment unit to install cable in apartment buildings.

Liberty is, once again, being extremely disingenuous. The documentation attached to Liberty's January 13 Letter relates to an installation that occurred 15 years ago. The charges imposed by electrical contractors in New York City are far higher today. Moreover, that documentation does not reflect (a) the cost of the materials that Paragon's predecessor company supplied from its own inventory to the electrical contractor, or (b) the work that Paragon's predecessor company performed itself in overseeing and assisting in the cable installation. Furthermore, Time Warner must normally pay for the entire system, including the installation of pipes and conduit or hallway moldings, not merely the insertion of cable in an existing conduit, as at 182 East 95th Street.

A more realistic assessment of the cost incurred by Time Warner in installing cable facilities is the contract recently entered into by Paragon for installation of a conduit cable system at a new apartment building being constructed on the Upper East Side of Manhattan. Because there is a confidentiality clause in this agreement, we cannot disclose the name of the building owner or the address of the building, but we can supply a redacted version of the contract evidencing the fact that Paragon was required to pay the owner's electrical contractor $70,000 for the cable installation in this building.[8] In fact, this figure would have been even higher if Paragon were paying the full costs, rather than 50% as represented by the building owner. Since this apartment building has approximately 273 apartment units, Paragon was required to pay the electrical contractor more than $256 per unit, in contrast to the $30 per unit that Liberty falsely alleges is "typical." Even the $256 per unit figure does not include the thousands of dollars worth of cable equipment that Paragon itself supplied to the electrical contractor to be installed in the building, nor does it include the substantial

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[8] See Redacted Contract at ¶ 2, a copy of which is attached hereto as Exhibit D.

amount of time devoted by Paragon's own staff to overseeing and checking the work of the electrical contractor and testing the system after its installation.

A significant feature of this contract is that it contemplates the landlord or its MVPD designee (in this case, Time Warner is advised it is Liberty) having its own separate cable in the home run conduits, installed at the expense of the landlord or its MVPD designee. Paragon and the landlord, or its MVPD designee, will also each have its own separate junction box in the stairwell, so that there will be no interference or disruption of service when a tenant wishes to change services. Each tenant will be able to select the company from which it wishes to receive service, or it may receive different services, or service to different outlets, from each company. This contract confirms the practicability of unfranchised MVPDs, like Liberty, installing cable and related facilities of their own even in buildings with conduits. Indeed, Liberty's installation of parallel facilities in the conduit systems at 10 West 66th Street and 420 East 51st Street proves that Liberty can install its own cable in existing conduits, even in older buildings.[9]

Time Warner has emphasized that having two competing companies share the use of the same cable facilities will inevitably lead to problems, including the impairment of the reliability and quality of service, and signal leakage concerns. Liberty itself has recognized that it is technically preferable for each company to have a separate system, rather than permitting the new competitor to take over components of the existing cable system. Liberty's then-chief operating officer, Bruce F. McKinnon, testified at a deposition on September 16, 1992, as follows:

> Q Is it true to state, then, that you believe that Liberty can provide better service at this building by installing its own cable in the conduit, rather than using the existing cable?
>
> MR. MacNAUGHTON: I object to the relevancy of the question. Let's hear that question back.
>
> (Record read.)
>
> MR. MacNAUGHTON: Go ahead.

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[9]See also Exhibit C hereto.

> A [by Mr. McKinnon] In general, I feel professionally more comfortable knowing that we have built a separate system to our design specs and subject to our quality assurance.
>
> That was my strong recommendation to this client, and to other clients.[10]

III. Liberty's proposed rule change would constitute an unauthorized taking of private property.

Liberty's argument that it is reasonable to allow competing MVPDs to expropriate the cable installed and paid for by a franchised cable operator on the ground that the cable operator will have already "recovered" the cost of such installation is specious. First, as demonstrated above, the actual cost of installing cable is typically hundreds of dollars per unit, not $30 per unit as Liberty disingenuously represents.

Second, Time Warner typically achieves a penetration rate of 60% in Manhattan apartment buildings. Thus, it does not have the opportunity to recover the cost of its cable system from each unit in the building; there are some apartment units in a typical building, the residents of which have never subscribed to cable service. Liberty, on the other hand, often insists on a building-wide or 100% penetration contract, which enables Liberty to use Time Warner's cable to provide service to apartment units that Time Warner has never even had the opportunity to serve. This is what is happening currently at the Gotham Condominium at 170 East 87th Street.

Third, when it speaks in terms of "recovery of costs," Liberty makes a false analogy to public utility regulation. Cable operators, of course, cannot be regulated as public utilities.[11] Even more to the point, the question under review is not the rate base for purposes of determining an appropriate rate or rate of return, but whether a cable operator should be forced to sell its distribution facilities to its competitors under any circumstances, or for any price. Time Warner strongly asserts that it is far beyond the scope of the Commission's regulatory authority, whether under the home wiring provision or otherwise, to force cable operators to relinquish ownership of critical portions of their MDU internal distribution facilities for the benefit of competitors. Such a forced sale, which amounts to a

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[10]Deposition of Bruce F. McKinnon, taken September 16, 1992, at 47.

[11]See 47 U.S.C. § 541(c).

"taking,"[12] removes the possibility for simultaneous competition among MVPDs, including the franchised cable operator, in an MDU, and as such, is contrary to Congress' express intent.[13]

Not only would the forced sale of cable distribution facilities impede competition among MVPDs, but such takeover by the cable operator's competitors will also seriously undermine the ability of the franchised cable operator to provide new services, including video, voice, or data transmissions in the future at such MDU, unless a tenant is willing to terminate the service it is receiving from the MVPD who has taken over use of the cable operator's broadband plant. Tenants, however, may want service from both an unfranchised MVPD (e.g., DBS service) and from the franchised cable operator. Since the DBS operator has no statutory or franchise obligation to extend service, in contrast to the franchised cable operator, the onus will inevitably fall on the franchised cable operator to build new plant in the building when tenants want service from the franchised operator in addition to that of an unfranchised MVPD. In attempting to rebuild cable plant, the franchised cable operator will often encounter resistance and delay from the landlord, who typically receives financial benefits under its contract with the unfranchised MVPD, and may therefore wish to prevent competition from the franchised cable operator. Furthermore, tenants may have to pay for the service of the unfranchised MVPD in any event, since condominium and cooperative boards often enter into building-wide contracts with an unfranchised MVPD and pass the cost on to all residents. The result of this is that if a tenant wants a particular service from the

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[12]See U.S. Const. amend. V ("nor shall private property be taken for public use, without just compensation"); see also Kaiser Aetna v. United States, 444 U.S. 164 (1979) (government effected a taking by creating public right of access to privately owned property); Bell Atlantic Telephone Cos. v. FCC, 24 F.3d 1441 (D.C. Cir. 1994) (FCC regulation authorizing physical collocation of LEC and CAP facilities is a taking of the LECs' property because it authorizes a permanent physical occupation of such property, without just compensation); Yancey v. United States, 915 F.2d 1534 (Fed. Cir. 1990) (federal regulation forced healthy livestock to be sold at reduced prices and, therefore, amounted to a taking of livestock owners' property).

[13]Moreover, if the physical property of a cable operator is to be involuntarily taken from it, just compensation must be determined in an adjudicatory proceeding subject to judicial review; the Commission may not "prescrib[e] a 'binding rule' in regard to the ascertainment of just compensation." Florida Power Corp. v. FCC, 772 F.2d 1537, 1546 (11th Cir. 1985), rev'd on other grounds, 480 U.S. 245 (1987). The determination of just compensation for a taking is "clearly a judicial function" and, hence, outside the Commission's scope of authority. Id.

franchised cable operator, it will simply demand that the franchised cable operator install new cable plant rather than terminate all service from the unfranchised MVPD who has taken over the original cable plant.

IV. By excluding "common" wiring from the scope of the home wiring provision, Congress clarified that such provision applies only to wiring physically located within each MDU unit, and not to wiring located in common areas of the MDU building.

Liberty attempts to create the impression that Congress only intended to prohibit the FCC from regulating the disposition of "common" wiring, which Liberty erroneously interprets to mean any wiring that serves more than one tenant.[14] The term "common" as used in the House Report actually refers to its location in "common areas," not to whether it is dedicated to more than one apartment unit. This interpretation is confirmed in the legislative history of the 1992 Cable Act, where Congress stated that the home wiring provision

> applies only to internal wiring contained within the home and does not apply to ... any wiring, equipment or property located outside of the home or dwelling unit.[15]

It could not be clearer that Congress was focusing upon the location of the cable within the apartment building, not the cable's status as being "dedicated" to one apartment unit, or more than one apartment unit.

The fact that Time Warner has not challenged the Commission's determination to fix the demarcation point at or about 12 inches outside the apartment unit does not constitute a concession that the Commission has authority to permit the expropriation of cable throughout apartment buildings. Rather, Time Warner has acquiesced in the Commission's current

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[14]See Liberty's January 13, Letter at n.1; Liberty's November 14, 1994 Letter at 2 & n.2. As Time Warner has previously noted, Liberty invented its own meaning of "common line" to fit its proposition that such term refers to wiring that is dedicated to more than one apartment unit. Time Warner's December 5, 1994 Letter at 2. This meaning is not used or even recognized in the industry, nor has Liberty offered a concrete definition for the term. It is simply a term developed by Liberty to enhance an otherwise wholly specious argument.

[15]H.R. Rep. No. 628, 102d Cong., 2d Sess. 118 (1992) ("House Report") (emphasis added).

demarcation point because, properly interpreted, it does not seriously impair Time Warner's legitimate rights, as would adoption of Liberty's interpretation to permit unfranchised MVPDs to take over massive amounts of cable plant throughout MDU buildings.

V. Time Warner has been forced to bring a small number of lawsuits to protect consumers' rights to obtain service from their provider of choice.

Liberty suggests that Time Warner sues landlords rather than Liberty because it wants to deter landlords from doing business with Liberty. This is completely false. First, Time Warner, over the years, has commenced only six actions against recalcitrant landlords having any known involvement with Liberty,[16] whereas Liberty has contracts (by Time Warner's count) with well over 120 apartment buildings in Manhattan. The small number of actions brought by Time Warner reflects Time Warner's forbearance, not Liberty's good conduct.[17]

Second, those lawsuits brought by Time Warner have been commenced either to permit Time Warner to upgrade its cable facilities at the building in question, pursuant to Time Warner's rights and obligations under New York law, or to prevent the landlord from seizing or interfering with Time Warner's existing facilities so as to preclude Time Warner from providing service at the building. The named defendants in such lawsuits were the landlords because Time Warner's contracts governing the ownership and protection of its property were entered into with the landlords rather than with Liberty, and because the Orders of Entry issued by the New York State Commission on Cable Television, which Time Warner was seeking to enforce, were directed to the landlords rather than to Liberty. Time Warner has no choice but to sue landlords when it is attempting to secure a court order

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[16]Two of these actions involved buildings owned directly by the Milstein family.

[17]Liberty does not hesitate to sue landlords to protect its own rights. See n. 3, supra. In addition, Liberty brings lawsuits in the name of building owners under contract to it for the purpose of preventing Time Warner from offering cable service to tenants, including Time Warner's current subscribers, at such buildings. See, e.g., Matter of 86th Street Tenants Corp., et al. v. New York State Commission on Cable Television, et al., Index No. 105358/93 (N.Y. Sup. Ct., N.Y. Co.), brought in the name of eight (8) cooperative apartment building corporations located in Manhattan. Liberty's attorney has recently perfected an appeal to the Appellate Division from a decision of the trial court upholding the right of cable operators to provide state-of-the-art franchised cable service to tenants of such buildings desiring it. See also 10 West 66th Street Corp. v. Manhattan Cable Television, Inc., Index No. 10407/92 (N.Y. Sup. Ct., N.Y. Co.), another case financed and controlled by Liberty to frustrate tenants' ability to subscribe to state-of-the-art franchised cable service.

preventing interference with its provision of service at a building or to protect its ability to offer services to customers over the facilities it has installed.

Liberty's contracts have always contained clauses giving Liberty control of any litigation brought by the franchised cable operator to obtain access. Contracts containing such clauses were entered into long before Time Warner ever commenced any action against a building under contract to Liberty, and Liberty uses such clauses to defeat or delay access by franchised cable operators. See n. 17 supra.

In closing, Time Warner underscores that the Congressional mandate as set forth in the home wiring provision of the 1992 Cable Act is sharply defined and carefully limited in scope. In its 1993 Cable Home Wiring Report and Order, the Commission adopted rules that are faithful to this narrow and specific statutory mandate and Congressional intent. The Commission should reaffirm its existing rules and reject the petitions for reconsideration which seek radical rule changes falling far afield from the purpose underlying the statutory home wiring provision.

Respectfully submitted,

Arthur H. Harding

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Greg Vogt
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EXHIBIT A

Liberty/River Tower Associates Agreement, dated June 19, 1992

PRIVATE CABLE LICENSE AGREEMENT

1. Parties. This Agreement is between LIBERTY CABLE COMPANY, INC., 30 Rockefeller Plaza, Suite 3026, New York, New York 10020 (the "Operator") and RIVERTOWER ASSOCIATES (the "Owner"), which owns and manages a residential building at 420 East 54th Street, New York, New York (the "Property").

2. The System. Subject to the terms of this Agreement, the Owner grants the Operator a license to install, operate and maintain equipment at the Property necessary to distribute satellite television programming (the "System"). The Operator shall, at its own expense, install, operate and maintain the System at the Property in a manner and location approved by Owner, and keep it in good repair. Owner shall provide electricity from the public utility for the System not to exceed $100 per year. Except for such electricity, Owner shall have no obligation to provide any services, make any repairs or restoration, provide any insurance or take any other actions with respect to the System, this Agreement or the services to be provided by Operator. The System shall be the personal property of the Operator except for cables, amplifiers and other related equipment between the satellite receiver and the individual apartments permanently affixed at the Property which shall become real property of the Owner. The System may not be used to serve other properties except that the System may be used to provide Operator's service at 60 Sutton Place South.

3. Installation. The Operator shall make a good and workmanlike installation of the System in accordance with the plans approved by the Owner and shall not damage the Property or injure anyone. Plans for the System and its installation are subject to the Owner's approval which shall not be unreasonably withheld or delayed. Such installation shall not be permitted until such plans have been received and approved by Owner. The Owner hereby approves the installation of such parts of the System as are installed as of the date of the execution of this Agreement.

4. Existing Cable Television Equipment. The parties agree and understand that the Property currently has cable television service from Manhattan Cable Television, Inc. ("MCTV"). The parties further agree and understand that MCTV service is provided, in part, through cables installed in conduits between the stairwells and individual apartments (the "Conduit"). The parties contemplate that Operator will serve individual apartments either by installing its own cable in the Conduit or by using cable already installed in the Conduit. Operator shall, at its own expense and prior to using the Conduit or any cable therein, either obtain MCTV's consent in writing to such use or obtain the appropriate court order allowing such use. For purposes of obtaining said consent or court order, Owner will be represented by counsel at Operator's expense and subject to Operator's selection and control, provided that any agreement with MCTV or court order is subject to Owner's review and consent, not to be unreasonably withheld or delayed. Owner may be represented by counsel of its own choice and at Owner's expense in any negotiations with MCTV or court proceedings related to the Conduit. Owner warrants and represents that there is no agreement between Owner and MCTV except as set forth in the annexed Exhibit A.

Operator will use best efforts to market its service at the Property. If Operator does not have fifty percent (50%) penetration within 6 months of access to apartments, then either party may terminate this Agreement which will be termination without cause

5. Programming. The Operator will provide the programming described in the annexed Programming Schedule (the "Programming") at the prices set forth therein. The Operator shall have sole discretion with respect to the selection, distribution and/or pricing of the Programming and related equipment except as set forth in the Programming Schedule.

6. Signal Quality. The System shall provide a video signal comparable to the signal quality required of cable television systems by the rules and regulations of the Federal Communications Commission.

7. Service Calls. The Operator's response to requests for service or repair will, if possible, be on a same-day basis but in no event later than one working day after the receipt of such request by telephone. The Operator's personnel will make service and repair calls on weekdays from 9 a.m. to 9 p.m., and on Saturdays from 9 a.m. to 5 p.m., as required, except for legal holidays. During the first thirty (30) days after the inception of service, service and repair calls will be made at any time, 24 hours a day. Any failure affecting a group of more than twenty-five (25) subscribers will be responded to within 24 hours on an emergency basis. The Operator will follow a reasonable rebate policy comparable to that of the franchised cable television operator.

8. Comparable Programming. The Operator, will during the term of this Agreement, provide programming comparable to the programming offered by the franchised cable television operator in the area and to the programming offered by Operator at any other property in the area.

9. Payments. Operator will pay Owner, on the first day of each month, a fee of $1.00 per month per subscriber together with reasonable evidence of the number of subscribers at the Property. Owner will, without cost or liability to Owner, and at Operator's sole cost and expense, reasonably cooperate with Operator in marketing Programming at the Property. Furthermore, Owner or its affiliate, Roofcom Associates, will make available roof space on the Property for use by Operator in accordance with a certain License Agreement dated June __, 1992 (the "Roof License") without charge so long as Operator has less than fifty percent (50%) penetration at the Property. Penetration means the number of Operator's paying subscribers as a percentage of the units in the Property. When penetration exceeds fifty percent (50%), then Operator will be obligated to pay the Fee as described in the Roof License. In the event Owner or its affiliate terminates the Roof License without cause, then Operator may terminate this Agreement without further liability. If the Owner or its affiliate terminates the Roof License for any reason, then Operator may install on the roof and use as part of the System such reception antennas as are necessary to continue providing Programming at the Property. In the event Owner terminates this Agreement without cause, then Operator may terminate the Roof License without further liability. Harry Macklowe will receive free cable television service from the System so long as he resides in the Building.

10. Security. The Owner will provide the same security for the System as it provides for the Property in general and will not knowingly allow unauthorized persons to move, interfere or make connections with the System. This shall not require Owner to

provide any additional security for the System but only the security normally provided by Owner in the day to day management of the Building.

11. Term. The term of this Agreement, unless terminated earlier as herein provided, is the longer of (a) the term of the Roof License or (b) (10) years from the date hereof. Either party may thereafter terminate this Agreement at any time on six (6) months written notice.

12. Owner's Reports. The Owner will endeavor to promptly report to the Operator any construction activity being performed by Owner which could adversely affect the System.

13. Force Majeure. Neither party shall be liable for failure to perform all or part of this Agreement by reason of an Act of God, labor dispute, non-delivery or inadequate performance by program suppliers, microwave or other electrical or physical signal interference, fire, flood, or any other cause beyond their respective reasonable control.

14. Rider. This Agreement includes the terms of the Rider annexed hereto beginning at ¶ 16.

OWNER	LIBERTY CABLE COMPANY, INC.
By: [signature]	By: [signature]
Title: VP	Title: [illegible]
Date: 6/19/92	Date: 6/19/92

PROGRAMMING SCHEDULE[1]

Basic Service

Channel 2 (WCBS) - New York
Channel 4 (WNBC) - New York
Channel 5 (WNYW) - New York
Channel 7 (WABC) - New York
Channel 9 (WWOR) - New York
Channel 11 (WPIX) - New York
Channel 13 (WNET) - New York
Channel 20 (WTXX) - Connecticut
Channel 21 (WLIW) - Long Island
Channel 25 (WNYE) - New York
Channel 31 (WNYC) - New York
Channel 41 (WXTV) - New Jersey
Channel 47 (WNJU) - New Jersey
Cable News Network (CNN)
CNN Headline
ESPN
Turner Broadcasting System (TBS)
Arts & Entertainment (A & E)
Madison Square Garden (MSG)
The Nashville Network (TNN)
CUNY
Financial News Network/CNBC
Madison Square Garden II (MSG II)
Music Television (MTV)
Video Hits One (VH-1)
Nickelodeon
Lifetime
WGN - Chicago
USA Network
C-SPAN
The Family Channel
The Discovery Channel
Home Shopping Network
Turner Network Television (TNT)
The Weather Channel
E! Entertainment Channel
International Channel
American Movie Classics (AMC)
Building Bulletin Board[2]
The Prevue Guide
Electronic Preview Guide
Comedy Central
Black Entertainment

Premium Channels

Home Box Office
Cinemax
The Movie Channel
Showtime
Bravo
The Playboy Channel
Disney Channel
Sports Channel[3]
Sports Channel America[3]
Pay-Per-View (Viewer's Choice One)
Pay-Per-View (Viewer's Choice Two)
Pay-Per-View

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[1] Prices for Programming will always be less than comparable programming offered by MCTV. No programming may be deleted unless it is also deleted for all of Operator's systems in New York City.

[2] Additional terminals and cameras required to activate these channels.

[3] Available on a bulk purchase basis only.

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16. Insurance. A. Operator shall not violate, or permit the violation of, any condition imposed by any insurance policy issued in respect of the Property and/or the property therein and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Property which would subject Owner, any Superior Lessor or any Superior Mortgagee (as hereinafter defined) to any liability or responsibility for personal injury or death or property damage, or which would increase any insurance rate in respect of the Property or the property therein over the rate which would otherwise then be in effect or which would result in insurance companies of good standing refusing to insure the Property or the property therein in amounts reasonably satisfactory to Owner, or which would result in the cancellation of or the assertion of any defense by the insurer in whole or in part to claims under any policy of insurance in respect of the Property or the property therein. In addition, Owner shall have the right to require that Operator pay to Owner, promptly upon request therefor accompanied by appropriate documentation, any increase in the cost of insurance currently carried by the Owner, or Owner, that the insurance carrier providing such insurance indicates in writing is specifically attributable to the existence or use of the System; provided that if Owner shall require such payment and such payment shall be greater than ten (10%) percent of the then annual fee payable pursuant to this Agreement, Operator shall have the right to terminate this Agreement upon thirty (30) days written notice to Owner given within twenty (20) days after Owner's request for payment.

B. Operator shall procure and maintain, at Operator's own cost and expense, comprehensive general liability insurance policies or executed certificates thereof, issued by an insurance company of recognized national standing authorized to write such insurance in the State of New York, (1) insuring both Owner and Operator in the amount of not less than $5,000,000 for death or bodily injury to any one person in any one occurrence, not less than $5,000,000 for death or bodily injury to more than one person in any one occurrence and not less than $5,000,000 for damage to property and (2) insuring Owner in the amount of $5,000,000 for damage to the Property as a result of any one occurrence. Such insurance may be effected under Operator's blanket liability policies, provided that such policies comply in all respects (including, without limitation, the amounts for which both Owner and Operator are insured) with the provisions of this paragraph 16, and shall be maintained (and renewal policies or certificates provided) throughout the term of this Agreement.

C. Operator shall deliver to Owner and any additional insured such fully paid-for policies or certificates of insurance, in form satisfactory to Owner, issued by the insurance company or its authorized agent, not more than 10 days after the date hereof. Operator shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Operator shall deliver to Owner and any additional insured such renewal policy or a certificate thereof at least 30 days before the expiration of any existing policy. All such policies shall be issued by companies of recognized responsibility licensed to do business in New York State and rated by Best's Insurance Reports or any successor publication of comparable standing and carrying a rating of AXII or better or the then equivalent rating, and all such policies shall contain a provision whereby the same cannot be cancelled or modified unless Owner and any additional insured are given at least 30 days' prior written notice of such cancellation or modification.

17. Compliance with Law. A. Operator agrees that the installation of the System shall be performed at Operator's sole cost and expense with materials of good quality, in a good and workmanlike manner, and in accordance with all applicable laws, ordinances, orders, regulations and requirements of all city, state, federal and other governmental authorities (including the Federal Communications Commission) now or hereafter having jurisdiction thereover and all applicable orders, regulations and requirements of the Board of Fire Underwriters or other insurance industry rating bodies (collectively, the "Requirements"). The System and the maintenance and use in or on the Property of the System shall, at Operator's sole cost and expense, at all times comply with all Requirements and Operator shall obtain at its sole cost and expense, all licenses, permits (including any special use permit) and other governmental approvals required. Operator shall submit true and complete copies of all required licenses and permits (including but not limited to permits from the Buildings Department and the FCC), to Owner before installing and operating any of the System on the Property.

B. Without limiting the generality of Paragraph 17.A., Operator represents, warrants, covenants and agrees as follows:

(i) Operator shall inform each subscriber by written notice of its complaint and billing dispute procedures (a) at the time of initial subscription or reconnection and (b) annually.

(ii) Operator shall comply with all Federal laws, rules, regulations and codes with respect to signal leakage which apply to cable television systems as defined thereunder.

(iii) Operator shall provide a quality of service equal to or better than the quality of service required by generally acceptable cable television industry standards, and in the event that Federal laws, rules, regulations and codes or generally acceptable cable television industry standards, whether now existing or hereafter adopted, are more favorable to subscribers or require higher quality standards than those presently in effect, Operator shall comply with such more favorable or higher quality standards, whether or not such standards would otherwise be applicable to Operator.

18. Liens. If any lien or claim in any way arising out of or relating to or connected with, directly or indirectly, the System or the installation, maintenance, use or removal thereof shall be filed or recorded against the Property, Operator shall, at Operator's sole cost and expense, cause same to be removed or otherwise cancelled or discharged of record within 15 days after the date on which Operator shall have been notified that such lien or claim is filed or recorded.

19. Repair. A. Operator hereby assumes sole and complete responsibility for the repair, maintenance, replacement, condition, operation and protection of the Property and the System and agrees that the System shall at all times be maintained in sound condition and good repair by Operator at Operator's sole cost and expense. Without in any way limiting the generality of the foregoing, Operator hereby specifically assumes the risk of any damage to or failure or malfunction of the System arising out of, or related to, or in any way connected with or caused by, directly or indirectly, (i) the location of the System, (ii) any interruption in or failure or inadequacy of the supply of electricity to the System, (iii) the installation, operation, maintenance and use of any other cable, electric or electronic system, service or device by Owner, by any tenant or licensee of Owner or by any other person authorized by Owner now or hereafter at any time to install, operate, maintain or use in [illegible] weather, acts of God, fire, riot or other civil disorder, vandalism or malicious mischief, strike or other labor difficulties, or (v) any other condition or cause.

B. Operator acknowledges that it has inspected the Property and shall accept same in the "as is" condition existing on the date hereof. Owner shall not be obligated to perform any work, make any installation or contribute any sum to prepare the Property for Operator's use and occupancy.

20. Surrender. Upon or prior to the expiration or termination of the term of this Agreement, Operator shall quit and surrender to Owner all portions of the Property in or on which the System is located, broom clean, in good order and condition, and Operator shall, at its sole cost and expense,

except to the extent it is the real property of the Owner.

remove the System and its other property, if any, therefrom and restore all portions thereof in or on which the System is located to their original condition. Without in any way limiting the generality of the foregoing, such restoration shall include the repairing of masonry and of any holes in a waterproof manner.

21. Non-Liability and Indemnification. A. Neither Owner, any Superior Lessor or any Superior Mortgage, nor any partner, director, officer, agent, servant or employee of Owner, any Superior Lessor or any Superior Mortgagee, shall be liable to Operator for any loss, injury or damage to Operator or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss, unless caused by or resulting from the negligence of Owner, its agents, servants or employees in the operation or maintenance of the Property. Further, neither Owner, any Superior Lessor or any Superior Mortgagee, nor any partner, director, officer, agent, servant or employee of Owner, any Superior Lessor or any Superior Mortgagee, shall be liable (a) for any such damage caused by other tenants or persons in, upon or about the Property, or caused by operations in construction of any private, public or quasi-public work; or (b) even if negligent, for consequential damages arising out of any loss of use of the Property or the System by Operator or any person claiming through or under Operator.

B. Operator shall defend and hold Owner, any Superior Lessor or Superior Mortgagee and their respective partners, shareholders, employees, officers, agents and representatives harmless and indemnify Owner, any Superior Lessor or Superior Mortgagee and their respective partners, shareholders, employees, officers, agents and representatives from and against all claims, demands, causes of action, proceedings, losses, costs, expenses (including, without limitation, attorney's fees and disbursements), damages, liabilities, fines, penalties, taxes, assessments or other governmental charges or impositions, whatsoever (including, without limitation, those for personal injury, property damage or copyright infringement or violation, anti-competitive practices and predatory pricing) and by or to whomsoever, arising out of, or related to, or in any way connected with or caused by, directly or indirectly, any one or more of the following: (i) the System, (ii) the installation, maintenance, condition, use, operation or removal of the System, (iii) ingress to or egress from the Property by Operator or Operator's agents or representatives, (iv) any act, omission or negligence of Operator or any of its partners, directors, officers, agents, employees or contractors, (v) the non-observance, non-performance, breach or violation of any of Operator's obligations or representations or warranties under this Agreement, (vi) the failure of Operator or the System to comply with any and all Requirements, (vii) the right to use and operate, or the violation of any requirement or agreement, law, contract, easement, property right or other instrument by virtue of the use and

by operation of law KMP

operation of, the System and (viii) access to the Property, rights of use and providing of programming or services by any cable television company. The provisions of paragraph 20 hereof and of this paragraph 21 shall survive the expiration or termination of this Agreement, but this shall not be construed to mean that other provisions of this Agreement do not similarly so survive the expiration or termination of this Agreement. Operator's defense pursuant to this Paragraph 21.B. shall be at the Operator's sole expense and control with counsel selected by Operator, subject to Owner's reasonable consent. Owner may, but is not obligated to, participate in such defense at Owner's expense. Operator shall not settle any claim it is obligated to defend and indemnify Owner against pursuant to this Paragraph 21.B. without Owner's written consent, not to be unreasonably withheld or delayed.

22. Non-Interference. A. Operator hereby represents and warrants that the System shall not interfere with any of Owner's equipment installed in the Property, shall not impair, interfere with or otherwise adversely affect television or radio reception or service or any other electric or electronic service, system or device in the Property, shall not interfere with the ownership, operation or management of the Property and shall not prejudice or in any way make more difficult the installation, maintenance or operation of any electric or electronic service, system or device which Owner, any tenant or licensee of Owner or any other person authorized by Owner at any time hereafter desires to install, maintain or operate in or on the Property. Upon request from Owner, Operator, at its sole cost and expense, shall relocate its System to eliminate any such impairment, interference or other adverse effect relating to such reception, ownership, operation, management or to existing services, systems or devices, and shall use reasonable efforts to eliminate the same with respect to such services, systems or devices commenced or installed in the future.

B. Operator shall design, install and operate any and all equipment permitted under this license, so as not to produce "line noise" in any portion of the Property or in the electrical system serving any portion of the Property. If Operator's equipment, in Owner's judgment, after review of the applicable plans and specifications, cannot be designed, installed and/or operated without producing line noise, Operator shall, at Operator's sole cost and expense, install such filters as shall be necessary to eliminate all line noise caused by design, installation and/or operation of such equipment.

23. No Warranty. Operator hereby acknowledges that the decision to install the System in or on the Property was made by Operator without any inducement or recommendation by Owner or Owner's partners, shareholders, employees, agents or representatives and that neither Owner nor Owner's partners, agents or

representatives has made or makes any representation or warranty, express or implied, as to the adequacy or desirability of the Property for the installation, operation, maintenance and use of the System for the purposes intended.

24. Rules & Regulations. Operator will observe and comply with such rules and regulations as Owner may reasonably establish with respect to access to and use of the Property. Without limiting the foregoing, except in an emergency, Operator will notify Joe Schwartz or such other person as Owner may designate, by telephone at least 24 hours prior to entering the Property for any purpose, and Operator's personnel or contractors shall register with Property security prior to entering the Property at any time and wear badges or other approved identification at all times while in or on the Property.

25. Notices. Except as otherwise provided in the second sentence of paragraph 24, any notice, statement or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed given when delivered personally or one day after delivery to Federal Express or other reputable overnight courier service, or five days after deposit in the United States registered or certified mails, addressed to the intended recipient's address set forth in the caption of this Agreement (and in the case of Operator, with copy to Liberty Cable Co., Inc., 30 Rockefeller Plaza, New York, New York 10020, Attention: Peter O. Price, or to such other address as such party shall have designated for the purpose in a notice to the other given in accordance with this paragraph 25.

26. No Assignment. Operator shall not assign, mortgage or encumber this Agreement nor sublicense or permit others to use the Property or any portion or portions thereof, except that Operator may, subject to Owner's prior written consent, not to be unreasonably withheld, assign this Agreement, in connection with the sale of Operator's business, to a major and reputable communications, cable or broadcasting company (such as, by way of example only, NBC, ABC, Cablevision and TCI) which has the financial capability to perform all of the obligations of Operator hereunder, provided that such assignee shall assume in writing all of the covenants, agreements and obligations on the part of Operator to be performed or complied with herein.

27. Certificates. Operator shall, without charge, at any time and from time to time hereafter, within five days after request by Owner, in a written instrument duly executed and acknowledged in form satisfactory to Owner, certify to any mortgagee or purchaser or prospective mortgagee or prospective purchaser, or any other person or entity specified by Owner, as to the validity and force and effect of this Agreement, in accordance with its tenor, as then constituted, as to the existence of any default on the part of any party under this Agree-

ment, as to the existence of any offsets, counterclaims or defenses thereto on the part of Operator, as to the payment of fees under this Agreement and as to any other matters as may be reasonably requested by Owner.

28. Owner Limited Liability. The term "Owner" as used in this Agreement shall mean the Owner at the particular time in question, and it is agreed that the covenants and obligations of Owner under this Agreement shall not be binding upon Owner herein named or any subsequent licensor with respect to any period subsequent to the transfer of Owner's or such subsequent owner interests under this Agreement by operation of law or otherwise, and that in the event of any such transfer, Operator agrees to look solely to the transferee for the performance of the obligations of Owner hereunder but only with respect to the period beginning with such transfer and ending with a subsequent transfer of such interest, and that a lease or assignment of Owner's interest in this Agreement shall be deemed a transfer within the meaning of this paragraph 28. In addition, notwithstanding anything to the contrary provided in this Agreement, Operator agrees that there shall be no personal liability on the part of Owner, or any of the partners, shareholders, principals or employees of Owner, arising out of any default by Owner under this Agreement, and that Operator shall look solely to the interest of Owner in and to the Property for the enforcement and satisfaction of any defaults by Owner hereunder, and that Operator shall not enforce any judgment against Owner or any other assets of Owner, nor attach any other assets of Owner; such exculpation of personal liability to be absolute and without any exception.

29. No Broker. Operator represents and warrants that it has dealt with and only with Owner or Liberty Cable Co., Inc. in connection with this Agreement and that no broker participated in the negotiation of this Agreement or is entitled to any commission or any other compensation in connection herewith, and hereby indemnifies Owner from and against any costs, damages and expenses which Owner may suffer or incur as a result of any claims by any broker for commissions or other compensation in connection herewith.

30. Merger. This Agreement contains the entire agreement between the parties hereto, may not be changed or terminated orally or by course of conduct and shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and, except as otherwise provided herein, their assigns.

31. Default. A. In addition to its other rights and remedies available at law or equity, Owner shall have the right, at its option, to terminate this Agreement (i) upon ten days notice to Operator in the event that any installment of the fee

shall not be paid within ten days after the same becomes due and payable, (ii) in the event that Operator shall fail to comply with, observe or perform any other obligation of Operator hereun der within 30 days after Owner gives notice of such failure or (iii) if Operator shall (1) commence any proceedings under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, (2) have filed against it a petition, application or proceeding described above in subclause (1) or such a petition, application or proceeding shall have bee commenced against it, which remains undismissed or unstayed for period of thirty (30) days or more, (3) by any act or omission indicate its consent to, approval of or acquiescence in any petition, application or proceeding described above in subclaus (1) or in the appointment of a custodian, receiver or any trust for it or any substantial part of any of its property or (4) generally not pay its debts as such debts become due. Owner shall also have the right to terminate this Agreement in the event that Owner shall become liable for any amount against whi Owner is to be indemnified by Operator under Paragraph 21.B hereof, and Operator shall not pay the amount thereof to Owner within thirty (30) days after demand, or in the event of the order of any court granting to any cable television company the right to provide cable television service to the exclusion of Operator.

B. Upon termination pursuant to this paragraph 32, Operator shall forthwith pay to Owner all fees and other su accrued to the date of termination and all rights of Operator, other than those expressly provided to survive termination of this Agreement, shall cease and terminate. The fee shall cease to accrue at the date of the payment provided for in the foreg ing sentence. Any termination of this Agreement by Owner pursu ant to this Paragraph 31 shall be a termination for cause.

C. In addition to and without restricting or limiting any other rights and remedies available to Owner, if fee payable by Operator to Owner is not paid within five (5) d after the due date therefor, Operator shall pay to Owner an additional charge of six ($.06) cents for each dollar so overd or the maximum rate permitted by law, whichever is less, in or to defray Owner's administrative and other costs in connection therewith. No demand for or notice of payment shall be requir as a condition to the application of the preceding sentence, i being understood that the due dates for payment of the fee are set forth in this Agreement.

32. Subordination, Notice to Superior Lessors and Mortgages. A. This license and all rights of Operator hereun are and shall be subject and subordinate to all ground leases, overriding leases and underlying leases of the Property and/or any portion thereof now or hereafter existing, and to all mort

portion thereof and/or any of such leases, whether or not such mortgages shall also cover other lands and/or buildings and/or leases, to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, replacements and extensions of such leases and such mortgages and spreaders and consolidations of such mortgages. This section shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Operator shall promptly execute, acknowledge and deliver any instrument that Owner, the lessor under any such lease or the holder of any such mortgage or any of their respective successors in interest may reasonably request to evidence such subordination; and if Operator fails to execute, acknowledge or deliver any such instruments within 10 days after request therefor, Operator hereby irrevocably constitutes and appoints Owner as Operator's attorney-in-fact, coupled with an interest, to execute and deliver any such instruments for and on behalf of Operator. Any lease to which this license is, at the time referred to, subject and subordinate is herein called a "Superior Lease" and the lessor of a Superior Lease or its successor in interest, at the time referred to, is herein called a "Superior Lessor"; and any mortgage to which this license is, at the time referred to, subject and subordinate is herein called a "Superior Mortgage" and the holder of a Superior Mortgage is herein called a "Superior Mortgagee."

B. If any Superior Lessor or Superior Mortgagee, or any designee of any Superior Lessor or Superior Mortgagee, shall succeed to the rights of Owner under this license, whether through possession or foreclosure action or delivery of a new lease or deed, then at the request of such party so succeeding to Owner's rights (herein called "Successor Owner") and upon such Successor Owner's written agreement to accept Operator's attornment, Operator shall attorn to and recognize such Successor Landlord as Operator's licensor under this license and shall promptly execute and deliver any instrument that such Successor Owner may reasonably request to evidence such attornment. Upon such attornment, this license shall continue in full force and effect as a direct license between the Successor Owner and Operator upon all of the terms, conditions and covenants as are set forth in this license, except that the Successor Owner shall not be:

(a) liable for any previous act or omission of Owner (or its predecessors in interest);

(b) subject to any counterclaim, offset, defense, [illegible] demands or defenses which Operator may have against Owner (or its predecessors in interest);